TRANSMITTAL OF APPEAL BRIEF

Docket No.
VID-00203/29

In re Application of: Barry H. Schwab et al.

Application No.	Filing Date	Examiner	Group Art Unit
08/822,397-Conf. #6309	March 20, 1997	R. M. Brown	2611

Invention: VIDEO INPUT SWITCH AND SIGNAL PROCESSING APPARATUS

TO THE COMMISSIONER OF PATENTS:

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/John G. Posa/ Dated: May 26, 2009

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Schwab et al

Serial No.: 08/822,397 Group No.: 2611

Filed: March 20, 1997 Examiner: R. Brown

For: VIDEO INPUT SWITCHING AND SIGNAL PROCESSING APPARATUS

APPELLANTS' APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real parties in interest in this case are Barry H. Schwab and John G. Posa, Applicants and Appellants.

II. Related Appeals and Interferences

Appellants wish to inform the Board that this application has been part of a prior appeal about which an opinion was rendered. See Appeal No. 2005-1014, Application No. 08/822,397.

III. Status of Claims

The present application is a continuation application that was filed with 17 claims. Claims 18-40 were added by amendment in September 2000. Claims 1-17 have been withdrawn from consideration. Claims 18-40[1] are pending, rejected and under appeal. Claims 18, 26 and 34 are the independent claims.

[1] The May 28, 2008 final Office Action states that claims 1-41 are pending, and claims 18-41 are rejected (*see* Summary and page 2). Claim 41, however, has not been introduced in this application.

IV. Status of Amendments

No after-final amendments have been filed.

V. Summary of Claimed Subject Matter

Independent claim 18 is directed to a method of automatically changing from a first TV program to an alternate TV program at a TV viewer location, comprising the steps of entering, at the viewer location, information regarding a viewing preference; transmitting a TV program from a source to a viewer location; receiving the TV program at the viewer location over a first TV channel, the TV program including a pointer to an alternate TV channel providing an alternate TV program with subject matter directly related to the TV program; and automatically switching the TV program to the alternate TV program using the pointer and the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching. (Specification, page 4, lines 25-26; Specification, page 5, line 18 to page 6, line 8; Specification, page 6, lines 24-27; Specification, page 7, lines 7-8)

Independent claim 26 is directed to a method of directing an automatic channel changing function at a viewer location to achieve a cohesive viewing environment, comprising the steps of providing a channel selector at a viewer location; and transmitting, from a broadcaster to the viewing location, a TV program on a primary transmission medium, the program including additional information for directing the channel selector to automatically switch, at least temporarily, to one or more secondary transmission media carrying alternative program material directly related to the TV program on the primary transmission medium. (Specification, page 4, lines 25-26; Specification, page 5, line 18 to page 6, line 8; Specification, page 6, lines 24-27; Specification, page 7, lines 7-8)

Independent claim 34 is directed to a television viewing system, comprising a source of an audio/video TV program including a channel-change command; and equipment at a TV viewing location remote from the source, including a channel selector 4, 8, 14 (Figure 1); 54A, 54B (Figure 2) and circuitry operative to perform the following functions: receive the TV program, detect the channel-change command, and automatically select, on a different transmission medium, alternative program material directly related to the TV program in response to the channel-change command. (Specification, page 4, lines 25-26; Specification, page 5, line 18 to page 6, line 8; Specification, page 6, lines 24-27;

Specification, page 7, lines 7-8)

VI. Grounds of Rejection To Be Reviewed On Appeal

The rejection of claims 18-40 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,930,160 to Vogel in view of U.S. Patent no. 5,664,046 to Abecassis.

VII. Argument

All claims 18-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,930,160 to Vogel in view of U.S. Patent no. 5,664,046 to Abecassis. Appellants argue that the Vogel/Abecassis combination does not teach or suggest all of Appellants' claim limitations and that, in fact, the system of Vogel teaches away from specific stapes and apparatus claim by Appellants.

By way of a succinct review, Vogel resides in a system to "censor" a video program. The system accomplishes this by effectively preventing the display of program material that does not fall within the limits of pre-defined parameters. While the overall concept is broad, the specific implementation disclosed imposes several critical limitations.

As one limitation of the Vogel system, the system cannot work without the use of a prescribed Classification Code: "According to a first aspect of the present invention, there is provided a video program receiving method capable of automatically censoring video programs comprising the steps of receiving a video program, with accompanying audio if any, receiving a classifications signal indicative of the content of the program being received, decoding the classification signal and, according to functions selected by the viewer, causing the receiver to direct to the output alternative program material for the duration of program of selected classification." ['190 patent; 2:53-63] Further: "According to a second aspect of this inventive concept, apparatus for receiving and automatically censoring video program is also provided, and comprises a video program receiver, a classification signal receiver, a controller equipped to decode said received signal and to control switching means which, according to functions selected by the user at the receiving station, cause the receiver to direct to its output alternative program material for the duration of the program of selected classification." [2:64 – 3:5] And: "The operation of this embodiment *[Figure 1]* relies on the presence of a program classification code within the video signal." [3:58-60]. All other embodiments share this limitation, as well.

Although the classification code of Vogel need not be part of the signal itself, if it is to be delivered through a separate path then it still will need to be synchronous with the signal—otherwise, an un-correlated code would have no relevance to the content of a particular signal at a particular point in time.

The preferred implementation of Vogel utilizes line 16 of the video signal (much as closed captioning utilizes line 21 of broadcast signals) to convey the classification signal. This is embedded within the vertical blanking interval of the analog/NTSC signal, and it is not clear how a signal outside the image area would be conveyed for digital signals. Vogel suggests an alternative transport via encryption within the audio portion of the signal, or via a separate program channel, but the details of how to implement these options in the case of digital signals are not disclosed.

The response to the detection of the classification code when a set limit (*e.g.* – content) has been exceeded) is to replace it with content provided from an alternative source, including other signal sources from different channels, locally generated signals, or locally-generated patterns (*e.g.* - test signals or "black").

When the response to source program content is triggered, it does so not by removing the unwanted portion, but by switching to an alternative source, thereby removing the entire source image from the display device: "If the bit is set, relay 7 is energized, causing the video and audio signals to be switched to the alternate sources. If the bit is clear, relay 7 is released, with the opposite effect. This procedure is repeated as a loop at high speed, so that the operation of relay 7 follows instantaneous changes in classification codes arriving at the video input of the invention." (4:56-63) See also Figure 1 and Figure 5, which show only simple source-signal switching capability.

Since there is only a single signal switching device according to Vogel. Audio information must necessarily be switched at the same time as the Video information is switched; as such, there is no provision for continuing the presentation of audio information when the video is switched, thus causing the disruption of audio even when only video information is to be masked.

In partial summation, Vogel discloses "classification codes" from which the desired action may be derived, at the point of viewing, when used in combination with other information. In that sense, the system of Vogel provides information on <u>when</u> an action is to be triggered, but does not include any information concerning exactly <u>what</u> action is to be performed.

Appellants' claims fully distinguish through the recitation of a "pointer" or other information, the recognition of which defines a precise operation in each case. Appellants' method claim 18, includes the limitations of receiving a TV program including a pointer to an alternate TV channel providing an alternate TV program with subject matter directly related to the TV program; and *automatically switching the TV program to the alternate TV program using the pointer and the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching*. (Emphasis added). Independent method claim 26 includes the step of transmitting, from a broadcaster to the viewing location, a TV program on a primary transmission medium, the program including *additional information for directing the channel selector to automatically switch, at least temporarily, to one or more secondary transmission media* carrying alternative program material directly related to the TV program on the primary transmission medium. (Emphasis added) And independent system claim 34 includes equipment operative to detect a channel-change command, and *automatically select, on a different transmission medium*, alternative program material directly related to the TV program *in response to the channel-change command*. (Emphasis added)

Based upon these limitations, Appellants' invention is capable of performing the intended channel-switching process without necessarily relying on any additional information (subject to being over-ridden by the User/Operator). Vogel neither teaches nor suggests any such operations based upon *specific channel re-direction information*.

With specific regard to Appellants' claim 18, the Examiner argues that Vogel meets the limitations of:

> "receiving the TV program at the viewer location over a first TV channel, the TV program including a pointer to an alternate TV channel providing an alternate TV program with subject matter directly related to the TV program; and
>
> automatically switching the TV program to the alternate TV program using the pointer and the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching."

in Vogel at 3:56-67 and 6:15-45, but Appellants respectfully submit that this is not the case. Vogel 3:56-67 reads as follows:

> The operation of this embodiment relies on the presence of a program classification code within the video signal. This can be provided in a number of well

known ways which ensure that the presence of such codes do not interfere with the normal operation of television receivers. The method used in this embodiment is encoding of a digital word in the form of black and white transitions located on line 16 of the video signal. This position is chosen so as to be invisible on the CRT display."

Clearly this passage discloses nothing about automatically switching a TV program to an alternate TV program on an alternate TV channel is response to the occurrence of a pointer. Vogel 6:15-45 reads as follows:

"For the purpose of implementing the invention without needing to modify the television receiver, the invention can comprise a standard television receiver in combination with a special controller which controls operation of the receiver by means of the remote control interface of the television receiver, if the receiver is equipped with remote control. That is, the censorship controller is equipped with interface means compatible with the remote control communication standard, for example an infra-red transmitter, so muting, blanking, channel-changing, or other censorship actions can be effected using unmodified receiving equipment. The channel-change function can provide the facility of displaying alternative material during periods of censorship. For example, a suitable pattern generator tuned to an unused television channel could be used to provide "electronic wallpaper" during commercial breaks. In some applications it may be desirable to implement some functions of the invention, such as PIN entry, in the remote controller, and other functions, such as the censorship function, in the receiver.

"Whereas the switching means of the embodiments described herein is a relay, any form of suitable switch, such as a solid-state arrangement, can be used.

"The alternative material selected during censorship periods can originate from a remote source, for example another television broadcast, or locally, for example from a video disk or tape player. The local source may also be simply a black signal generator. Furthermore, the invention is not limited to providing only one alternative program source."

Again, although Vogel discusses a channel-change function that can provide the facility of displaying alternative material during periods of censorship, Vogel *does not disclose* a pointer to an alternate TV channel. At best, as shown in Figure 5 of the '160 patent, Vogel's "classification signal" causes a relay to flip to receive an alternate audio input and an alternate video input from a predetermined source.

Moreover, Vogel clearly does not teach or suggest "a pointer to an alternate TV channel

providing an alternate TV program *with subject matter directly related to the TV program* (Emphasis added). To address this deficiency the Examiner adds the teachings of Abecassis at 2:47-60. But regardless of the teachings of Abecassis, Vogel clearly teaches away from providing subject matter directly related to the TV program, since the entire point of Vogel *is to censor*. Referring to the passage above cited by the Examiner, if Vogel switches to another program, it has no contents. Rather, the Vogel system facilitates muting, blanking, channel-changing, or other censorship actions can be effected using unmodified receiving equipment. The channel-change function can provide the facility of displaying alternative material during periods of censorship. For example, a suitable pattern generator tuned to an unused television channel could be used to provide "electronic wallpaper." This clearly teaches away form any subject matter "related to the TV program." Indeed, without a pointer or other information providing specific directions to an alternative channel, Vogel could never accommodate switching to a channel with related program material, regardless of the teachings of Abecassis. Independent claim 26 and 34 also include the limitation of the alternative material being "directly related" to the primary program material.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, pending claims 18-40 of the subject application continue to be in condition for allowance and Appellants seek the Board's concurrence at this time.

Respectfully submitted,

By:_____

Date: May 26, 2009

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APPENDIX A

CLAIMS ON APPEAL

18. A method of automatically changing from a first TV program to an alternate TV program at a TV viewer location, comprising the steps of:

entering, at the viewer location, information regarding a viewing preference;

transmitting a TV program from a source to a viewer location;

receiving the TV program at the viewer location over a first TV channel, the TV program including a pointer to an alternate TV channel providing an alternate TV program with subject matter directly related to the TV program; and

automatically switching the TV program to the alternate TV program using the pointer and the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching.

19. The method of claim 18, wherein the TV program is a cable TV program.

20. The method of claim 18, wherein the TV program is an audio/video program transmitted in digital form.

21. The method of claim 18, wherein the step of entering the information at the viewer location includes using a hand-held remote-control unit.

22. The method of claim 18, wherein the step of entering the information at the viewer location includes using an on-screen programming technique.

23. The method of claim 18, wherein the step of entering the information at the viewer location includes downloading the information from a computer.

24. The method of claim 18, wherein the pointer is transmitted continuously with the TV

program.

25. The method of claim 18, wherein the pointer is transmitted at the initiation of the TV program.

26. A method of directing an automatic channel changing function at a viewer location to achieve a cohesive viewing environment, comprising the steps of:

providing a channel selector at a viewer location; and

transmitting, from a broadcaster to the viewing location, a TV program on a primary transmission medium, the program including additional information for directing the channel selector to automatically switch, at least temporarily, to one or more secondary transmission media carrying alternative program material directly related to the TV program on the primary transmission medium.

27. The method of claim 26, wherein the additional information is derived from preference information entered at the viewer location.

28. The method of claim 26, wherein the preference information is entered using a hand-held remote-control unit.

29. The method of claim 26, wherein the preference information is entered using an on-screen programming technique.

30. The method of claim 26, wherein the TV program is a cable TV program.

31. The method of claim 26, wherein the TV program is an audio/ video program transmitted in digital form.

32. The method of claim 26, wherein the additional information is transmitted continuously with the TV program.

33. The method of claim 26, wherein the additional information is transmitted at the initiation of the TV program.

34. A television viewing system, comprising:

a source of an audio/video TV program including a channel-change command; and

equipment at a TV viewing location remote from the source, including a channel selector and circuitry operative to perform the following functions:

receive the TV program,

detect the channel-change command, and

automatically select, on a different transmission medium, alternative program material directly related to the TV program in response to the channel-change command.

35. The system of claim 34, further including:

a device for inputting descriptive information by a viewer; and

wherein the multi-channel tuner is also changed to a different station as a function of the descriptive information in response the channel-change command.

36. The system of claim 34, wherein:

the device is a hand-held remote-control unit; and

the descriptive information is entered using an on-screen programming technique.

37. The system of claim 34, wherein the TV program is a cable TV signal.

38. The system of claim 34, wherein the TV program is an audio/ video program transmitted in digital form.

39. The system of claim 34, wherein the descriptive information is transmitted continuously with the TV program.

40. The system of claim 34, wherein the descriptive information is transmitted at the initiation of the TV program.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.